IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 485 of 1999.

Date of decision: 29.12.2006.

State of H.P. ... Appellant

Versus

Dina Nath … Respondent

Coram :

The Hon'ble Mr. Justice V.K. Ahuja, Judge.

Whether approved for reporting?[1] No.

For the appellant: Mr. Ashutosh Burathoki, Additional Advocate General.

For the respondent: Mr. C.N. Singh, Advocate.

V.K. Ahuja, J. (Oral):

This appeal has been filed by the appellant/State of H.P. against the judgment of the Court of learned Additional Chief Judicial Magistrate, Dehra, dated 28.5.1999, vide which the respondent was acquitted of the charge framed under Sections 279/337/427 I.P.C. and Section 184 of Motor Vehicle Act.

Brief facts of the case are that on 17.7.1990 a statement was made by complainant Usha Rani under Section 154 Cr.P.C. that she had come from Ludhiana along with her children and at about 9.25A.M., they were going to Jawali Ji temple in the bus. She was sitting on the front seat and when the bus reached near Ludhiana Sarai, the driver was driving the bus at a fast speed and the bus struck with a jeep and

[1]Whether reporters of Local Papers may be allowed to see the judgment? No.

the bus went inside a shop. There were 40/45 passengers in the bus and many of the passengers suffered injuries and jeep also fell down. On this report, a case was registered and after investigation, the challan was filed before the learned trial Court who tried the respondent as detailed above resulting in his acquittal.

I have heard Mr. Ashutosh Burathoki, learned Additional Advocate General, for the appellant and Mr. C.N. Singh, learned counsel for the respondents and have gone through the record.

The submissions made by the learned Additional Advocate General were that there is some evidence to prove that the accident had taken place due to fast driving by the respondent coupled with the report of the Service Manager who examined the bus and as such, the findings to the contrary of the learned trial Court are liable to be reversed.

On the other hand, the learned counsel for the respondent has supported the impugned judgment for the reasons given therein.

Coming to the evidence, PW1 Smt. Usha Rani is the complainant herself who has stated that the bus struck with a jeep which fell down in a Nullah and the passengers numbering 40/45 sitting in the bus suffered injuries and the bus struck with a shop. She stated that the accused was driving the bus rashly and negligently. In the cross-examination, she has admitted that the driver applied the brakes at that time, but the bus again started on the descend. In the further cross-examination, she admitted that there was a steep descend ahead and a turning also and if the bus had not struck with the shop, serious accident could have resulted. She denied the suggestion that the accident took place due to failure of brakes.

PW2 Devinder Goel has also stated that the bus struck with a jeep and he is the driver of the jeep with which the bus had struck. He stated that the bus struck with the jeep and he and other occupants suffered injuries. He did not deny the suggestion that the brakes had failed at that time and the bus had not stopped inspite of the application of the brakes. PW 4 Ram Pal is the shopkeeper with whose shop the bus had struck after hitting the jeep. He stated that the jeep fell down and entered inside his shop and he suffered damages. In cross-examination, he has admitted that at the place of accident there is a descend and a turning also and there are shops on both sides. He also stated that there was a deep gorge on both sides of 50 feet. He admitted that the driver had taken this step to save people and if the bus had not struck with his shop, this would have resulted in serious accident. He also stated that the driver made his best efforts to save the lives of the people and he was also giving horn, but the jeep was going at a high speed. PW 5 Smt. Raksha Devi turned hostile and admitted in cross-examination that the driver made efforts to save them and in case the bus had not struck with the shop, all the passengers would have died.

PW6 Smt. Sudesh Kumari was also declared as hostile. PW7 Salig Ram was one of the occupant of the jeep with which the bus had struck. He stated that the bus came at a high speed and hit the jeep and he had became unconscious. In the cross-examination, he admitted that there is a turn at the place of accident. He also admitted that the spot due to failure of the brakes, the bus was to go in the Nullah in case it had not struck with the shop. He also stated that the balance of the mind of

the driver of the bus was perfect when he struck the bus inside the shop due to failure of the brakes.

PW8 P.N. Sharma, Service Manager, had examined the bus and given his report Ext.PW8/A. He had stated that the pressure of the brakes was 1½ Kg. as against required 5Kg. He also stated that this pressure also can be less due to the accident. He admitted in the cross-examination that if the brakes are applied frequently, the pressure can be less. He did not state specifically that the cause of the accident was failure of the brakes, though an inference can be drawn from his statement that the accident could have taken place due to failure of the brakes.

PW9 Mehru another witness has stated that the bus went into the shop and struck with a jeep. He denied the suggestion that the brakes of the bus had failed.

On a perusal of the evidence led by the prosecution, it is clear that there is no positive evidence on record which could suggest that the accident had taken place due to rash and negligent driving of the respondent. On the other hand, cross-examination of the witnesses suggests that the driver had applied the brakes, but the bus did not stop and he hit the jeep and thereafter, the bus struck with the shop and in case, this had not been done, major accident could have taken place. Thus, it is clear that the findings of the learned trial Court which held that the guilt of the respondent was not established and those findings cannot be said to be perverse in any manner so as to call for interference by this Court and as such, are liable to be affirmed. Accordingly, the

appeal filed by the appellant is dismissed. Bail bonds stands discharged forthwith. A copy of the judgment along with record be sent to the concerned Court.

(V.K. Ahuja),
Judge

December 29, 2006
(BSS)